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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-182687

DATE: February 4, 1975

MATTER OF: Wilkinson & Jenkins Construction Co., Inc.

DIGEST:

1. Use of wrong bidding schedule in IFB rather than new bidding schedule incorporated in IFB by amendment which reduced estimated quantity of excavation work may not be waived or corrected as minor informality or irregularity under ASPR § 2-405(iv)(B) (1974 ed.) because correction of error would displace another bidder.

2. Use of wrong bidding schedule rather than new bidding schedule incorporated in IFB by amendment which reduced estimated quantity of excavation work may not be corrected by applying unit price to reduced estimated quantity total since to do so would displace another bidder and intended bid cannot be ascertained from bid and invitation and there is nothing in bid or invitation to establish that bid would have been same for reduced quantity as pricing may be influenced by variations in quantity estimate requirements.

The Wilkinson & Jenkins Construction Co., Inc. (Wilkinson), protests the refusal of the Corps of Engineers, Jacksonville, Florida District (Corps), to permit correction or waiver of a mistake made in its bid under invitation for bids (IFB) DACW17-75-B-0015 for grouting work on the Cross Florida Barge Canal.

The bidding schedule, which consisted of five items, specified estimated quantities for each item for bidding by unit price and extended estimated total amounts. Item 1 called for excavation of 810 cubic yards. However, amendment 3 to the IFB reduced the estimated quantity of item 1 to 700 cubic yards. A new bidding schedule accompanied the amendment to reflect the reduced quantity of item 1.

Of the five bids opened as scheduled on October 30, 1974, Conrad Weihnacht Construction, Inc. (Weihnacht), was the apparent low bidder at \$148,800. Wilkinson was next low at \$149,200. When reviewing the bids, the contracting officer noticed that, although Wilkinson acknowledged amendment 3, Wilkinson had not submitted its bid on the new bidding schedule reflecting the reduced quantity of amendment 3. Rather, Wilkinson submitted its bid based on the original bidding schedule quantity of 810 cubic yards of excavation at a unit price of \$5.00 per cubic yard.

The contracting officer then contacted Wilkinson for purposes of bid verification. During the conversation, it became apparent to Wilkinson that it had bid on the basis of excavating an extra 110 cubic yards. At that point, Wilkinson queried whether its unit price of \$5.00 per yard would govern. The note directly below the bidding schedule provided "* * * In case of variation between unit price and the extension, the unit price will be considered to be the bid.* * *" Alternatively, Wilkinson requested the matter be corrected as a mistake in bid.

On November 13, the contracting officer informed Wilkinson that its error could not be waived as a minor informality or corrected as a clerical mistake pursuant to Armed Services Procurement Regulation (ASPR) § 2-405 or 2-406 (1974 ed.), respectively. This conclusion was predicated on the fact that application of the \$5.00 unit price for 700 cubic yards would have reduced Wilkinson's bid to \$148,650, or \$150 lower than Weihnacht's. Wilkinson protested the proposed award to Weihnacht to GAO.

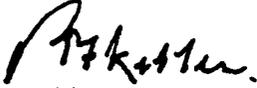
Since the correction of the error would displace another bidder, it cannot be considered a waivable or correctable minor informality or irregularity under ASPR § 2-405(iv)(B) (1974 ed.).

Furthermore, where, as here, correction of a mistake in bid would displace another bidder, ASPR § 2-406.3(a)(3) (1974 ed.) requires that a determination to correct shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. While Wilkinson made a mistake by using the wrong bidding schedule, its intended bid is not, in our opinion,

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ascertainable substantially from the bid and IFB. Wilkinson contends that, under the terms of the IFB, the unit price governs in the event of a variation between the unit price and extension. However, there is no variation between the unit and extended price in the bidding schedule used by Wilkinson so as to require any resolution of any variation in favor of the unit price. Cf. B-176425, October 18, 1972. Nor can the unit price for the 810 cubic yards be applied to the 700 cubic yard requirement of amendment 3. Our Office has recognized that consideration of quantity estimate requirements may influence pricing decisions. Matter of Regis Milk Company, B-180930, June 17, 1974; 49 Comp. Gen. 48 (1969). There is nothing in the bid or IFB to establish that Wilkinson would have bid the same amount for a different quantum of work reflected by amendment 3.

Therefore, the protest is denied.


Deputy Comptroller General
of the United States